

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : NO. 02-11,659
:
:
vs. : CRIMINAL DIVISION
:
RICKY ANTWON HOLMES, : Pre-Trial Motion
Defendant :
:

OPINION AND ORDER

Defendant has been charged with possession with intent to deliver cocaine, possession with intent to deliver marijuana, possession of a controlled substance (marijuana), and possession of drug paraphernalia. In his Pre-Trial Motion, filed October 22, 2002, argument on which was heard December 23, 2002, Defendant seeks to dismiss the count of possession with intent to deliver marijuana. Defendant contends the evidence presented at the preliminary hearing was insufficient as a matter of law to support the charge. At argument, counsel agreed the Court should base its decision on this issue solely on the transcript from the preliminary hearing.

A review of that transcript supports Defendant’s contention. The arresting officer testified that upon executing a prior arrest warrant, he strip searched Defendant and found cocaine and marijuana concealed underneath his scrotum in various packages. The officer testified that he “believe[d] the marijuana was probably for personal use.” The officer had also indicated in his testimony that he considered himself an expert in determining whether a person possessed a drug with the intent to deliver same. A very small amount of marijuana was involved and the officer gave no contrary indication that the possession of marijuana was for other than personal use. It does appear, therefore, that the Commonwealth failed to establish a prima facie case of possession of the marijuana with intent to deliver same. This particular charge should therefore be dismissed.

ORDER

AND NOW, this 8th day of January, 2003, for the foregoing reasons, Defendant's Pre-Trial Motion is hereby granted and count 2 of the information filed October 18, 2002 is hereby dismissed.

By the Court,

Dudley N. Anderson, Judge

cc: DA
Marc Lovecchio
Gary Weber, Esq.
Hon. Dudley N. Anderson